IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE
Assigned on Briefs June 9, 2009

STATE OF TENNESSEE v. BRANDON McCOY

Direct Appeal from the Circuit Court for Maury County
No. 15820 Robert L. Jones, Judge

No. M2008-02264-CCA-R3-CD - Filed March 8, 2010

Following a jury trial, Defendant, Brandon McCoy, was convicted of two counts each of attempted second degree murder, a Class B felony, attempted especially aggravated robbery, a Class B felony, and attempted aggravated robbery, a Class C felony. The trial court sentenced Defendant as a Range I, standard offender, to twelve years for each attempted second degree murder conviction in counts one and two of the indictment, twelve years for each attempted especially aggravated robbery conviction in counts three and four, and six years for each attempted aggravated robbery conviction in counts five and six. The trial court ordered Defendant to serve his sentences in counts one, three, four, five and six of the indictment concurrently. The trial court ordered Defendant to serve his sentence in count two concurrently with counts three, four, five, and six, but consecutively to Defendant's sentence in count one for an effective sentence of twenty-four years. Defendant's convictions were affirmed on appeal, but we remanded for a new sentencing hearing because the trial court failed to make the findings required by *State v. Wilkerson*, 905 S.W.2d 933 (Tenn. 1995) to support the imposition of consecutive sentencing based on a finding that Defendant was a dangerous offender. *State v. Brandon McCoy*, No. M2007-00421-CCA-R3-CD, 2008 WL 1774985 (Tenn. Crim. App., at Nashville, April 18, 2008). On remand, the trial court again imposed an effective sentence of twenty-four years. On appeal, Defendant argues that the trial court erred in finding that an extended sentence is necessary to protect the public. After a thorough review, we affirm the judgments of the trial court.

Tenn. R. App. P. Appeal as of Right; Judgments of the Circuit Court Affirmed

THOMAS T. WOODALL, J., delivered the opinion of the Court, in which DAVID H. WELLES and J.C. MCLIN, JJ., joined.

Robert C. Richardson, Jr., Columbia, Tennessee, for the appellant, Brandon McCoy.

Robert E. Cooper, Jr., Attorney General and Reporter; Clarence E. Lutz, Assistant Attorney General; Mike Bottoms, District Attorney General; and Dan Runde, Assistant District Attorney General, for the appellee, the State of Tennessee.

OPINION

I. Background

The facts supporting Defendant's convictions were summarized by this Court on the initial appeal as follows:

> At trial, Officer Brad Ribley of the Columbia Police Department testified that he was dispatched to 501 West 12th Street at 3:37 a.m. on July 2, 2005. When he arrived, he spoke with one of the residents, José Rodriguez, summoned emergency medical services, and called his supervisor. Officer Ribley observed blood on the concrete steps leading to the back door, and inside the house he saw a Hispanic male who was bleeding and appeared to have been shot in the chest and arm and another male who had been shot in the arm. He noticed a large amount of blood in the kitchen and a set of bloody footprints leading from the kitchen to the bathroom.
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> On cross-examination, Officer Ribley testified that there were beer bottles and cartons inside the house and recalled seeing a bullet hole in the east wall of the living room, facing Galloway Street. In response to defense counsel's question, "Did any of the people there in the home that night seem intoxicated or appear intoxicated to you?", he replied, "They had the odor of alcohol[ic] beverage on their breath and about their person." Although this response is unclear, we discern from our review of the record that Officer Ribley was referring to all of the occupants of the house.
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> Guadelupe Fernandez testified that on July 1, 2005, he went to the home of a friend, Lorenzo, at 501 West 12th Street around 9:00 or 10:00 p.m. to celebrate the birthday of another friend, Mario Lacan. José Rodriguez, Ernesto Landin, and Miguel Rodriguez were also present, and all were drinking beer. Fernandez acknowledged that he drank "quite a few" beers that night. When the men ran out of beer between 2:00 and 2:30 a.m., Fernandez, Landin, and José Rodriguez drove to a KwikSak on Carmack Boulevard to purchase more. While Landin was inside purchasing the beer, a car containing two girls, a white man, and the defendant pulled up beside Fernandez and Rodriguez, who were waiting outside in Landin's car. The defendant

approached Fernandez and Rodriguez and asked to borrow a cellular phone. After informing the defendant that they did not have a phone, Landin returned to the car and they left. The defendant returned to the other vehicle, which followed Landin's car back to 501 West 12th Street. When they arrived at their destination, Fernandez and Landin entered the house, and Rodriguez stopped to speak with the defendant's group. Afterwards, Rodriguez entered the house and the defendant's group left.

Fernandez testified that around twenty minutes later, the defendant, accompanied by two white males, returned to 501 West 12th Street and knocked on the door. When Rodriguez answered the door, the defendant pointed a pistol at him. The other two men also had guns. The defendant ordered Rodriguez to give him money, and Rodriguez replied, "I don't have no money. If you want to shoot me, shoot me." Rodriguez then ducked behind a couch and the defendant shot Mario Lacan. When the shooting began, Fernandez and the other partygoers attempted to run to a bedroom. He said that the defendant and the other two assailants demanded money from and aimed guns at all of the partygoers. After the shooting ceased, he saw Ernesto Landin bleeding from his arm and Mario Lacan bleeding from his back and arm.

On cross-examination, Fernandez acknowledged that he was a "little" drunk that night. He could not recall what clothing the defendant was wearing but remembered that he was wearing a bandanna. He testified that the defendant brandished a small black gun, and the entire incident lasted between five and ten minutes. He said that there were no guns at the residence before the three assailants arrived.

José Rodriguez testified that he arrived at 501 West 12th Street between 10:30 and 11:00 p.m. on July 1, 2005, and began drinking beer with the other partygoers. When they ran out of beer, he accompanied Landin and Fernandez to the Kwik-Sak in Landin's vehicle. He gave Landin money to purchase more beer and remained in the vehicle with Fernandez. While waiting, a red two-door car pulled up beside their vehicle. Rodriguez saw two white females in the front seat, and two white males and a black male in the backseat. The defendant exited the car and asked if he could borrow a cellular phone, and Rodriguez and Fernandez informed him that they did not have a phone. After Landin returned with the beer and they drove off, the red car followed Landin, Rodriguez, and Fernandez back to 501 West 12th Street. When they arrived, the defendant asked Rodriguez to come to him, but the car drove away before

he reached it so he returned to the house. Fifteen to twenty minutes later, the defendant and two white males returned and knocked on the door. Rodriguez answered the door, and the defendant put a gun to his chest. The defendant demanded money, and Rodriguez replied, "I ain't got no money, man. You can kill me." The defendant said he would kill Rodriguez if he did not surrender his money, and Rodriguez told him to "go ahead." Rodriguez testified that he jumped behind a couch and the defendant began shooting. He testified that he thought the three assailants intended to rob each of the partygoers and that they pointed guns at each of them. On cross-examination, Rodriguez testified that he saw the defendant fire one shot from a black nine millimeter or .380 caliber semiautomatic handgun.

Ernesto Landin testified that he arrived at Mario Lacan's birthday party around 8:00 p.m. His testimony regarding the trip to Kwik-Sak was substantially similar to that of Rodriguez and Fernandez. When they arrived back at 501 West 12th Street, Landin saw a red car containing two white males, two white females, and the defendant park behind their car. He went inside the house and resumed the celebration while Rodriguez spoke to the people in the car. Later, when Rodriguez answered the knock on the door, Landin saw the defendant, accompanied by two white males, enter the apartment with a gun and demand money from Rodriguez. After Rodriguez jumped behind the couch, Landin saw the defendant shoot Lacan, and said that one of the bullets hit him after passing through Lacan. He noticed that the defendant's gun was a black semiautomatic but was unsure of its caliber. He testified that a bullet remained lodged in his arm for approximately one week before a doctor removed it and gave it to the police.

On cross-examination, Landin acknowledged consuming seven to eight beers that night. He testified that the heavier of the two white male assailants also fired his weapon. He said that on the night of the shooting the defendant had short hair and was wearing a red headband. He testified that, immediately prior to the shooting, Rodriguez reached into his pocket to retrieve his cellular phone. He denied that any of the partygoers had a gun or argued over drugs that night.

Mario Lacan testified that he arrived at 501 West 12th Street around 11:00 p.m. on July 1, 2005. He said that after his three friends returned from the Kwik-Sak, he was sitting in a chair drinking beer when he heard two shots. He saw only two assailants and did not see them enter the house. However, he testified that the defendant was one of the assailants. He could not recall

how many shots were fired but said he was shot in the ribs, the left arm, and the back. Lacan was transported to Vanderbilt University Medical Center for treatment, where he remained for three or four days.

On cross-examination, Lacan testified that he did not see who shot him and was unable to describe the white male assailant he saw. He acknowledged that he was drunk on the night of the shooting. He said the defendant was about eight feet away from him when he was shot. After he was shot, he fell to the floor and saw the defendant firing a black weapon. Asked what the defendant wore on the night of the shooting, Lacan could recall only that he wore a headband.

Teri Arney, a firearms examiner with the Tennessee Bureau of Investigation, testified that in connection with this case she examined a black .380 caliber Lorcin semiautomatic handgun and a silver .357 caliber four-shot derringer handgun, as well as cartridge cases and bullet fragments recovered from the crime scene. She concluded that the bullet recovered from Ernesto Landin was fired from the Lorcin, and a bullet fragment recovered from Mario Lacan was fired from the derringer. Two other cartridge cases recovered at the scene had been fired from the Lorcin, and two cartridge cases and a bullet recovered from a neighboring house had been fired from the derringer.

Columbia Police Officer Paul McCormick testified that at approximately 3:00 a.m. on July 2, 2005, he was patrolling in the area of West 12th and Galloway Streets when he noticed a red Pontiac Sunfire known to him to be driven by Tiffany Beaver. He observed four individuals in Beaver's car and a Hispanic male leaning into the passenger's side window. As he passed by, the Sunfire drove off and the Hispanic male walked back to the residence. Shortly thereafter, he received a call concerning a shooting at 501 West 12th Street. Officer McCormick returned to the scene and told other officers that he recently had seen Beaver's car outside the residence. He spoke with José Rodriguez, whom he recognized as the Hispanic male who had been leaning into Beaver's car, and asked a fellow officer to go to the Graymere Apartments where Beaver lived to see if he could locate her car. The officer located the car and Officer McCormick drove to the apartment complex to speak with Beaver.

When Officer McCormick arrived at Beaver's apartment, she and Christy Conner were present. While he was speaking with Beaver, she received a phone call and permitted him to listen in. The male caller, who

seemed somewhat excited, asked Beaver to pick him up at "Jake and John's" house. Officer McCormick instructed Beaver to agree to pick up the caller and then drove her and Conner to 1908 Lynnwood Drive. After Beaver and Conner pointed out "Jake and John's" house, Officer McCormick drove them back to the Graymere Apartments and then returned to Lynnwood Drive. He parked his patrol car, walked toward 1908 Lynnwood Drive, and hid behind a van parked in front of the house. After about twenty minutes, he saw a white male exit the front door of the house. Shortly thereafter, a second white male and the defendant exited the house. Officer McCormick emerged from behind the van and identified himself, and the defendant and white male fled behind the house. After a brief pursuit, Officer McCormick apprehended the white male, but the defendant scaled a fence and evaded capture.

Simultaneously, Officer Archibald, who had been sent to assist Officer McCormick, detained three suspects in the front yard. Officer McCormick searched the backyard of 1908 Lynnwood Drive and discovered the Lorcin, the derringer, and a bag containing clothing.

Detective Jeff Duncan of the Columbia Police Department was called to 1908 Lynnwood Drive to assist in the investigation of the shooting. He interviewed John Stephenson, one of the four individuals detained by Officers Archibald and McCormick. He asked Stephenson to sign a form waiving his Miranda rights and noticed that, as Stephenson signed the waiver, he held his right arm under the table, while writing unsteadily with his left hand. Detective Duncan then discovered that Stephenson had a gunshot wound on his right arm. On cross-examination, Detective Duncan testified that Stephenson told him that he had been shot in the arm by a Hispanic male at 501 West 12th Street and that he owned a black .380 firearm. On redirect examination, Duncan testified that during his investigation no guns were found at 501 West 12th Street and no evidence was discovered corroborating Stephenson's account that he had been shot by a Hispanic male.

Jeremy Justin Jackson testified that, as a result of his involvement in the shooting, he pled guilty to aggravated robbery in juvenile court in exchange for a reduced sentence and his truthful testimony. He said he took a number of pills on July 1, 2005, and acknowledged writing letters to the defendant, saying that he did not remember many of the events of that night. On July 1, 2005, he and the defendant rode around in a small red car with "Tiffany" and "Christy." They eventually pulled into the Kwik-Sak parking lot, and Jackson called out to some Hispanic males and asked if they "needed some weed."

Jackson testified that the men initially declined his offer but then changed their minds. He said he intended to swindle the men by giving them some rolled-up paper rather than marijuana. Before he could do so, the Hispanic men asked his group to follow them to their house. When they arrived at 501 West 12th Street, Jackson again attempted to swindle the men, but before he could complete the transaction, "Tiffany" drove off and headed to John Stephenson's house at 1908 Lynnwood Drive. "Tiffany" and "Christy" took Jackson and the defendant to Stephenson's house and departed.

Although Jackson's testimony is unclear, we discern that the defendant, John Stephenson, and a person named "Nick" drove off in the car of Stephenson's mother, leaving Jackson at 1908 Lynnwood Drive. Jackson later rejoined the three about a block from the victims' house. He testified that he began "blacking out" at this point and remembered only that he followed Stephenson and the defendant through the back door of the victims' house. He said that, as soon as he walked in, he thought the "Spanish" were shooting at them, so he ran back to the car of Stephenson's mother. Jackson then returned with the defendant, Stephenson, and "Nick" to 1908 Lynnwood Drive. Jackson gathered a black gun and the clothes he, the defendant, and Stephenson were wearing in a plastic bag and placed the bag in the backyard. He said he did not see Stephenson or the defendant shoot anyone at 501 West 12th Street, but he was certain that there was gunfire inside the house. On cross-examination, Jackson testified that he took "about eight" Xanax pills on July 1, 2005. He said he never saw a gun in the defendant's hands that night.

Tiffany Beaver testified that on the evening of July 1, 2005, she encountered Christy Conner, Jeremy Jackson, and the defendant at a store near a bowling alley. The three got into Beaver's car, and she drove around town for an unspecified period of time. They eventually stopped at the KwikSak, where they encountered some Hispanic men who wished to buy drugs. She followed the Hispanic men to their house but quickly drove off after seeing a police car. Jackson asked her to take him and the defendant to "Jake and John's" house. After she did so, Beaver drove home to the Graymere Apartments with Conner. A police officer then came to her apartment and, while the officer was there, she received a phone call from "everybody" asking her to return to "Jake and John's" house. She and Conner went with the officer and showed him the location where she dropped off Jackson and the defendant. On cross-examination, Beaver testified that the defendant did not have a gun on the night of the shooting.

Brandon McCoy, 2008 WL 1774985, at *1-5.

The trial court relied on the testimony presented at the first sentencing hearing, the presentence report, and the testimony presented at the second hearing. Although a transcript of the first sentencing hearing is included in the record on appeal, the presentence report is not. However, we may take judicial notice of our court records and thus have obtained the presentence report from the record in the first appeal. *See State v. Courtney Anderson*, No. W2001-02764-CCA-R3-CD, 2003 WL 57421, at *2 (Tenn. Crim. App., at Jackson, Jan. 6, 2003), *perm. to appeal denied* (Tenn. June 12, 2006); *State v. Cornelius Edward Kendricks, Jr.*, No. 03C01-9304-CR-00131, 1995 WL 131332, at *1 (Tenn. Crim. App., at Knoxville, Mar. 28, 1995), *perm. to appeal denied* (Tenn. Sept. 5, 1995).

At the first sentencing hearing, Emily Thigpen, a probation officer with the Tennessee Board of Probation and Parole, testified that she prepared Defendant's presentence report. According to the presentence report, Defendant, who turned eighteen on June 9, 2005, was a senior at Columbia Central High School at the time of the offenses, and lived with his mother and brothers. Defendant reported first using alcohol and the drug ecstacy after he turned eighteen. Defendant reported working for Nissan Corporation as a summer intern from June 28, 2005, until his arrest, but Ms. Thigpen was unable to verify his participation in the program. Defendant also reported working for a funeral home in Columbia. An employee of the funeral home verified that she knew Defendant, but she told Ms. Thigpen that the company did not have any records indicating that Defendant had worked for the funeral home. Ms. Thigpen stated that Defendant had two juvenile adjudications for robbery, as well as juvenile adjudications for assault, resisting arrest and truancy. According to the presentence report, the robbery and assault offenses were committed in April 2005, approximately two months before the offenses which are the subject of this appeal. On cross-examination, Ms. Thigpen acknowledged that she did not verify the accuracy of Defendant's juvenile history.

Mario Lacan, one of the victims, testified at the first sentencing hearing that he was not able to work as much or as fast as he did before he was shot in the elbow and stated that he often lost contracts to other subcontractors. Mr. Lacan also said that potential employers were reluctant to hire him because of the robbery. Mr. Lacan stated that he still experienced pain in his elbow.

Defendant testified at the first sentencing hearing that he was not armed during the incident. Defendant explained that he just rode to the victim's house with his friends. Defendant stated that he had been "doing a lot of soul searching" since his incarceration, and he wanted another chance to prove himself to his family. On cross-examination, Defendant insisted that the victims were "mistaken" when they identified him at trial as one of the

shooters. Defendant reiterated that he was not armed on the night of the offenses. Defendant acknowledged that he had a juvenile adjudication for robbery, but he said he could not remember any of the details about the offense because at that point in time he was using marijuana, powdered cocaine, and alcohol "a lot." In response to the trial court's questions, Defendant acknowledged that he was the first person to enter the victims' home. Defendant said that he stayed at a friend's house after the offenses until he was apprehended approximately two and one-half weeks later. Defendant denied that he tried to flee from the arresting officers.

At the second sentencing hearing, Defendant testified again that he had learned from the "situation," and, if he were released from prison, he would be "a better person." In response to the trial court's questions, Defendant first insisted that he did not know that he should turn himself in to the police after the first warrant was issued on July 4, 2005. Defendant then stated that he waited to turn himself in until he could raise the money for an attorney. Defendant denied that he went to the victims' residence to commit robbery. Defendant continued to maintain that he was not armed on the night of the offenses.

The trial court found that Defendant was a dangerous offender for whom consecutive sentencing was appropriate, and that an extended sentence was necessary to protect the public from further criminal conduct by Defendant. The trial court found that the effective sentence of twenty-four years was reasonably related to the severity of the offenses. The trial court considered the fact that Defendant's violent conduct put four or more individuals at risk, the fact that Defendant entered the house in the early morning hours and discharged his weapon into a crowded room wounding two of the individuals, and the fact that the victims, all of whom were Mexican nationals, were possibly targeted because of their status in this country. The trial court also found significant Defendant's evasion of capture for nearly three weeks, and that when he was located, he had to be apprehended by the arresting officers.

II. Standard of Review

On appeal, the party challenging the sentence imposed by the trial court has the burden of establishing that the sentence is improper. *See* T.C.A. § 40-35-401, Sentencing Comm'n Comments; *see also State v. Arnett,* 49 S.W.3d 250, 257 (Tenn. 2001). When a defendant challenges the length, range, or manner of service of a sentence, it is the duty of this Court to conduct a de novo review on the record with a presumption that the determinations made by the court from which the appeal is taken are correct. T.C.A. § 40-35-401(d). This presumption of correctness, however, "'is conditioned upon the affirmative showing in the record that the trial court considered the sentencing principles and all relevant facts and circumstances.'" *State v. Carter*, 254 S.W.3d 335, 344-45 (Tenn. 2008) (quoting *State v.*

Ashby, 823 S.W.2d 166, 169 (Tenn. 1991)). "If, however, the trial court applies inappropriate mitigating and/or enhancement factors or otherwise fails to follow the Sentencing Act, the presumption of correctness fails," and our review is de novo. *Carter,* 254 S.W.3d at 345 (citing *State v. Shelton*, 854 S.W.2d 116, 123 (Tenn. Crim. App. 1992); *State v. Pierce*, 138 S.W.3d 820, 827 (Tenn. 2004)).

In conducting a de novo review of a sentence, this Court must consider (a) the evidence adduced at the trial and the sentencing hearing; (b) the presentence report; (c) the principles of sentencing and arguments as to sentencing alternatives; (d) the nature and characteristics of the criminal conduct involved; (e) evidence and information offered by the parties on the enhancement and mitigating factors set forth in Tennessee Code Annotated sections 40-35-113 and 40-35-114; (f) any statistical information provided by the Administrative Office of the Courts as to Tennessee sentencing practices for similar offenses; and (g) any statement the defendant wishes to make in the defendant's own behalf about sentencing. T.C.A. § 40-35-210(b); *see also Carter*, 254 S.W.3d at 343; *State v. Imfeld*, 70 S.W.3d 698, 704 (Tenn. 2002).

Consecutive sentencing is guided by Tennessee Code Annotated section 40-35-115(b), which states in pertinent part that the trial court may order sentences to run consecutively if it finds by a preponderance of the evidence that "[t]he defendant is a dangerous offender whose behavior indicates little or no regard for human life, and no hesitation about committing a crime in which the risk to human life is high." T.C.A. § 40-35-115(b)(4). When imposing consecutive sentences based on the defendant's status as a dangerous offender, the trial court must, "in addition to the application of general principles of sentencing," find "that an extended sentence is necessary to protect the public against further criminal conduct by the defendant and that the consecutive sentences must reasonably relate to the severity of the offenses committed." *State v. Wilkerson*, 905 S.W.2d 933, 939 (Tenn. 1995). Additionally, the trial court should consider general sentencing principles, including whether the length of a sentence is justly deserved in relation to the seriousness of the offense. *Imfeld*, 70 S.W.3d at 708. The decision to impose consecutive sentencing falls within the sound discretion of the trial court. *See State v. Adams*, 973 S.W.2d 224, 230-31 (Tenn. Crim. App. 1997).

III. Analysis

Citing *State v. Tadaryl Darnell Shipp*, No. 03C01-9907-CR-00312, 2000 WL 290964 (Tenn. Crim. App., at Knoxville, Mar. 21, 2000), *no perm. to appeal filed*, Defendant submits that his youth and lack of a criminal history as an adult negate the need for an extended sentence in order to protect the public. Defendant also points out that the trial court placed little weight on his history of juvenile adjudications, that the crimes occurred in a single

episode "during a period of substance abuse while with friends," and that he was a high school senior at the time of the offenses.

Based on our review, we conclude that the record supports the trial court's finding that Defendant is a dangerous offender with little or no regard for human life and no hesitation about committing a crime in which the risk to life is high. Defendant approached the victims at a store, and ascertained their residence by following the victims to the apartment where the group were partying. A few minutes later, Defendant and two companions forced their way into the home with guns. Defendant demanded money from the victims, and when they refused to comply with his demand, Defendant opened fire in the crowded room, wounding two of the men. *See State of Tennessee v. Marlos Shields*, No. W2007-01721-CCA-R3-CD, 2009 WL 2047588, at *11 (Tenn. Crim. App., at Jackson, July 15, 2009), *perm. to appeal denied* (Tenn. Dec. 14, 2009) (concluding that the defendant's forced entry into a home, the demand of money followed by an assault on the victim with two deadly weapons supported a finding that the defendant was a dangerous offender); *State v. Chanceller Chatman*, No. W2008-00568-CCA-R3-CD, 2009 WL 1819241, at *7 (Tenn. Crim. App., at Jackson, June 26, 2009), *perm. to appeal denied* (Tenn. Nov. 23, 2009), *perm. to appeal denied* (Tenn. Nov. 23, 2009) (finding support for the trial court's finding that the defendant was a dangerous offender when the defendant entered a home, robbed everyone present, and then opened fire as he was leaving).

As Defendant submits, however, a finding that he is a "dangerous offender," by itself, is not sufficient to support consecutive sentences. *Wilkerson*, 905 S.W.2d at 938. Under *Wilkerson*, before the sentencing court may impose consecutive sentences for one classified as a "dangerous offender," the court must also find that the resulting sentence is reasonably related to the severity of the crimes and necessary to protect the public against further criminal conduct. *Id*.

The fact that the offenses were committed during a single criminal episode does not render consecutive sentencing inappropriate. *Gray v. State*, 538 S.W.2d 391, 393 (Tenn. 1976) (observing that "[r]ather than engulf the courts of this State in the tangled labyrinth of the single criminal episode concept, which we feel is irrelevant to a determination of whether to impose consecutive sentencing, we view the situation as demanding an approach which will best protect the interests of society"). However, a defendant's youthfulness and lack of a criminal record may establish that the defendant is not a threat for continued criminal behavior, and, therefore, an extended sentence is not necessary to protect the public from the defendant. *Tadaryl Darnell Shipp*, 2000 WL 290964, at *4. In *Tadaryl Darnell Shipp*, we recognized "that actions taken by a person before he or she has attained adulthood, much less mature adulthood, may poorly reflect the kind of person he or she may be upon release from confinement decades later, when the person is middle aged or in the declining years of life."

Id. Nonetheless, "otherwise favorable factors" supporting a defendant's assertion that he does not present a continued threat to the public may be offset by such considerations as the circumstances of the offense where appropriate or the defendant's lack of remorse. *Id*. (citing *State v. Pike*, 978 S.W.2d 904, 928 (Tenn. 1998) (appendix); *State v. Martin Palmer Jones*, No. 03C01-9803-CR-00084, 1999 WL 93144, at *6 (Tenn. Crim. App., at Knoxville, Feb. 25, 1999), *perm. to appeal denied* (Tenn. July 12, 1999)). In *Tadaryl Darnell Shipp*, we concluded that the circumstances of the offense, a "brutal, barbaric series of assaults upon" the victim resulting in her death, "and the lack of remorse overshadow[ed] the defendant's youthfulness and lack of criminal record." *Tadaryl Darnell Shipp*, 2000 WL 290964, at *4.

In addition to a lack of remorse, a defendant's failure to accept responsibility for his or her criminal conduct may also indicate that the defendant "poses a continuing threat to the public." *State v. Turner*, 41 S.W.3d 663, 676 (Tenn. Crim. App. 2000); *State v. Phillip Anthony Farris*, No. M2007-02686-CCA-R3-CD, 2009 WL 161092, at *6 (Tenn. Crim. App., at Nashville, Jan. 22, 2009), *perm. to appeal denied* (Tenn. May 4, 2009). We have previously observed that a defendant's amenability to rehabilitation "relates directly to [the] protection of the public factor and may, on occasion, be determinative of whether the concurrent or the consecutive sentence should be imposed." *State v. Donald Mitchell Boshers and Ronald Dewaine Morrow, III*, No. 01C01-9412-CR-00402, 1995 WL 676402, at *5 (Tenn. Crim. App. Nov. 15, 1995), *perm. to appeal denied* (Tenn. May 13, 1996) (citing T.C.A. § 40-35-103).

In the case *sub judice*, Defendant had just turned eighteen years old when he committed the charged offenses. He was a high school senior and lived with his mother and brothers while attending school, all factors reflecting favorably on the imposition of concurrent rather than consecutive sentences. However, other factors are also present which point to a need to protect the public from future criminal conduct by Defendant.

Defendant acknowledged at the first sentencing hearing that he had at least one juvenile adjudication for a robbery committed shortly before the charged offenses, and the presentence report indicates that he has been in and out of the juvenile court system since he was approximately fifteen years old. Defendant told Ms. Thigpen that he did not use alcohol or drugs until he was eighteen. Yet, he testified at the first sentencing hearing that he could not remember any of the details about his juvenile adjudication of robbery because, in Defendant's words, "over them [sic] period of years, I have [to] admit I do do marijuana. I drink a lot. I do powder."

Although Defendant expressed regret for the offenses at both sentencing hearings, his remorse was directed more toward the circumstances he now finds himself in as a result of

his criminal conduct rather than any sympathy for the victims. Defendant consistently refused to accept responsibility for his actions. Despite the victims' description of his violent conduct that night, Defendant continually insisted that he was not armed on the night of the offenses and that he did not participate in the attempted robbery of the victims. Defendant blamed the incident on his friends and a night of drug abuse. After the incident, Defendant fled from the police officers and eluded capture for approximately three weeks, and, when discovered, had to be apprehended. Defendant's violent actions and his failure to accept responsibility for his conduct supports the trial court's finding that he poses a continued threat to the public.

Based on our review, we conclude that an effective sentence of twenty-four years is closely related to the severity of the offenses, is necessary to protect the public from further criminal conduct by Defendant, and is congruent with the general principles of sentencing. Defendant is not entitled to relief on this issue.

CONCLUSION

After a thorough review, we affirm the judgment of the trial court.

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THOMAS T. WOODALL, JUDGE